

**CANAL ELECTRIC COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY
AND COMMONWEALTH ELECTRIC COMPANY**

Direct Testimony of Robert H. Martin

D.T.E. 02-34

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Robert H. Martin. My business address is 800 Boylston Street,
4 Boston, Massachusetts 02199.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am the Director, Electric Energy Supply, Asset Divestiture and Outsourcing for
7 NSTAR Electric & Gas Corporation. In that capacity, I am responsible for
8 coordinating the divestiture of the generating assets and entitlements and the
9 procurement of supplies for Standard Offer and Default Service for Cambridge
10 Electric Light Company (“Cambridge”), Commonwealth Electric Company
11 (“Commonwealth”), Boston Edison Company (“Boston Edison”), and Canal
12 Electric Company, (collectively, “NSTAR Electric”).

13 **Q. Please briefly summarize your educational background and business**
14 **experience.**

15 A. I am a graduate of Bentley College with a Bachelor of Science Degree in
16 Accounting. Upon graduation in 1974, I joined Commonwealth Energy System’s
17 Service Corporation where I held several accounting positions, including Group
18 Accounting Supervisor. In 1984, I accepted the position of Supervisor of Cost
19 Administration. In 1987, I was promoted to Manager of Revenue Requirements
20 and Cost Administration. In 1997, I became the Manager of Regulatory

1 Accounting and Special Projects for Cambridge, Commonwealth, Commonwealth
2 Gas Company and Canal Electric Company (“Canal”) (Cambridge,
3 Commonwealth and Canal, together the “Companies”). In 1999, I became the
4 Director of Revenue Requirements for the regulated companies of NSTAR. I
5 assumed my present position in May 2000.

6 **Q. Please describe your present responsibilities.**

7 A. I am responsible for securing a least-cost energy supply and for mitigating the
8 costs incurred under existing above-market Power-Purchase Agreements
9 (“PPAs”). My responsibilities also include coordinating the sale of NSTAR
10 Electric’s PPAs and securing a supply for Standard Offer, Default Service and
11 wholesale energy customers.

12 **Q. Have you previously testified before the Department of Telecommunications**
13 **and Energy (the “Department”) or any other regulatory body?**

14 A. Yes. I have most recently presented testimony before the Department in
15 D.T.E. 01-94 regarding approval of a 2001 Amendatory Agreement with Vermont
16 Yankee Nuclear Power Corporation. I have also recently testified in D.T.E. 00-82
17 regarding the reconciliation of Boston Edison’s Transition Charge and D.T.E. 00-83
18 regarding the reconciliation of Commonwealth’s and Cambridge’s Transition
19 Charges. I have also presented testimony in previous reconciliation charge cases,
20 D.T.E. 99-107 (Boston Edison), and D.T.E. 99-90 (Cambridge and Commonwealth).
21 I have presented testimony before the Department in D.T.E. 98-126, concerning the
22 approval of Commonwealth’s buyout of its Pilgrim power-purchase contract,

specifically providing a description of the cost savings for Commonwealth's customers, and the associated beneficial effect on Commonwealth's Transition Charge, resulting from the buyout. I have presented testimony before the Department in D.T.E. 98-78/83, concerning the approval of COM/Electric's divestiture of its non-nuclear generating assets, providing a description of the Residual Value Credit and a discussion of the resulting Transition Charge, in compliance with the Massachusetts Electric Industry Restructuring Act of 1997 (the "Act") and the Department's order in D.P.U./D.T.E. 97-111 (1998). I have also testified before the Federal Energy Regulatory Commission regarding, among other matters, the divestiture of Canal's former fossil generation units, Canal Unit 1 and Canal Unit 2, located in Sandwich, Massachusetts.

II. PURPOSE OF TESTIMONY

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide support for Canal's request for approval, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, 94A and 94B, of: (1) the sale of its share of Seabrook Nuclear Power Station Units 1 and 2 ("Seabrook" or the "Station") to FPL Energy Seabrook, LLC ("FPLE Seabrook"); and (2) the Ninth Amendment to Power Contract By and Between Canal Electric Company and Cambridge Electric Light Company and Commonwealth Electric Company, which provides for Cambridge's and Commonwealth's termination of any and all obligations with respect to purchasing Seabrook power from Canal (the "Buyout Agreement").

1 **Q. What is the basis for the Companies' interest in the sale of Seabrook?**

2 A. Canal has a 3.52317 percent joint ownership interest in Seabrook. As such, Canal
3 participated in an open, competitive auction for the sale of Seabrook (the
4 “Auction”), which resulted in the execution of a purchase and sale agreement
5 between owners of a controlling interest in Seabrook (the “Selling Owners”)¹ and
6 FPLE Seabrook (the “PSA”) (Petition, Exhibit 3). In addition, along with
7 Cambridge and Commonwealth, Canal is a party to the Seabrook PPA, described
8 below.

9 **Q. How is your testimony organized?**

10 A. The remainder of my testimony is presented as follows: Section III provides a
11 background to the transaction; Section IV describes the auction process that
12 resulted in the signing of the PSA; Section V describes the PSA and the
13 transaction in general; Section VI describes the Buyout Agreement; and Section
14 VII describes the Companies' request for findings relating to the status of

¹ Seabrook's owners consist of the following: North Atlantic Energy Corporation, (“NAEC”), Great Bay Power Corporation (“GBP”), Little Bay Power Corporation (“LBP”), New Hampshire Electric Cooperative, Inc. (together with NAEC, GBP and LBP, the “New Hampshire Owners”); The United Illuminating Company (“UI”), The Connecticut Light and Power Company (“CL&P”) (together with UI, the “Connecticut Owners”), Canal, New England Power Company (“NEP”) (together with Canal, the Massachusetts Owners”), Hudson Light and Power Department (“Hudson”), Taunton Municipal Lighting Plant (“Taunton”) and the Massachusetts Municipal Wholesale Electric Company (“MMWEC”) (together with Hudson and Taunton, the “Municipal Owners”). The Selling Owners are limited to the New Hampshire Owners, the Connecticut Owners and the Massachusetts Owners. The Selling Owners, along with North Atlantic Energy Service Corporation (“NAESCO”), have executed a PSA with FPLE Seabrook. NAESCO manages Seabrook and, for that reason only, NAESCO is a party to the transaction solely for the purpose of providing certain representations and warranties to FPLE Seabrook.

1 Seabrook as an Exempt Wholesale Generator (“EWG”), pursuant to § 32 of the
2 Public Utilities Holding Company Act (“PUHCA”).

3 **III. BACKGROUND OF TRANSACTION**

4 **Q. Why is Canal selling its interest in Seabrook?**

5 A. On November 25, 1997, the Massachusetts Legislature enacted Chapter 164 of the
6 Acts of 1997 (codified, in pertinent part, in G.L. c. 164). The Act, among other
7 directives, mandates the divestiture of non-nuclear generating assets by electric
8 utility companies. Although the divestiture of nuclear assets was not required by
9 the Act, the sale of these assets is consistent with the Act’s directive that “[t]he
10 interests of consumers can best be served by an expedient and orderly transition
11 from regulation to competition in the generation sector consisting of
12 the...functional separation of generation services from transmission and
13 distribution services.” St. 1997, c. 164, § 1(m).

14 Further, divestiture of Seabrook is consistent with the requirement in the Act that
15 electric utility companies mitigate transition costs. Under the Act, mitigation
16 includes the sale of all generating facilities (~~see~~ G.L. c. 164, § 1A(b)), and any
17 electric company wishing to recover transition costs is required to mitigate such costs
18 (~~see~~ G.L. c. 164, § 1G(d)(1)). Accordingly, the sale of Seabrook is consistent with
19 the divestiture of generating assets to competitive entities and furthers the policy
20 goals of the Commonwealth.

1 **Q. Is there governing authority for the sale of nuclear generating assets?**

2 A. Yes. The Department has general supervisory authority of all gas and electric
3 companies under G.L. c. 164, § 76. In addition, the Department has previously
4 approved sales of nuclear generation. See, e.g., Boston Edison Company and
5 Commonwealth Electric Company, D.T.E. 98-119/D.T.E. 98-126, at 5
6 (March 22, 1999) (requiring that a “sale process is equitable and maximizes the
7 value of the existing generation facilities being sold”); Western Massachusetts
8 Electric Company, New England Power Company and Fitchburg Gas and Electric
9 Light Company, D.T.E. 00-68 (2000).

10 **Q. Does the sale of Seabrook meet the applicable tests?**

11 A. Yes. Seabrook was offered in a public Auction conducted pursuant to New
12 Hampshire Revised Statutes RSA 369-B:3, IV, (b), (13) and 2001 N.H. Laws
13 29:15, II. The New Hampshire Public Utilities Commission (the “NHPUC”), in
14 coordination with the Connecticut Department of Public Utility Control’s
15 (“DPUC”) specially appointed Utility Operations Management and Analysis
16 auction team (“UOMA”), appointed J.P. Morgan Securities Inc. (“JPMorgan”), a
17 nationally prominent investment banking firm, to act as its exclusive auction
18 advisor to conduct a sale of Seabrook in accordance with New Hampshire and
19 Connecticut law and a settlement agreement between Public Service Company of
20 New Hampshire (“PSNH”) and the State of New Hampshire. The Auction
21 process ensured complete, uninhibited and non-discriminatory access to all data
22 and information and was equitable and maximized the value of the assets being

1 sold. Paul M. Dabbar, of JPMorgan, explains in detail the Auction process in his
2 pre-filed direct testimony (the “Dabbar Testimony”), filed herewith.

3 **IV. DESCRIPTION OF THE AUCTION PROCESS**

4 **Q. Please explain the auction process for the sale of Seabrook.**

5 A. As discussed more fully in the Dabbar Testimony, JPMorgan, as Auction advisor,
6 began the Auction with an information-gathering stage, during which period
7 JPMorgan solicited interest from entities known or believed to be potential
8 bidders for Seabrook. Simultaneously, an Offering Memorandum was prepared
9 that described Seabrook in detail and was distributed to potential bidders who met
10 the requirements established by JPMorgan for eligibility to participate in the
11 Auction. Potential bidders were required to sign a confidentiality agreement
12 restricting them from contacting any of the Selling Owners, the NHPUC or the
13 DPUC. Once the Auction was underway, JPMorgan coordinated correspondence,
14 questions, and site visits with the potential bidders in order to facilitate the due
15 diligence process. Once the initial binding bids were submitted, JPMorgan then
16 reviewed the initial binding bids, performed bid analyses and, along with
17 Commission Staff and UOMA, determined the leading bidder. Post-bid
18 negotiations with the leading bidder followed after this review. These
19 negotiations culminated in the execution of the PSA.

1 **Q. Please discuss the winning bid.**

2 A. The winning bid was offered by FPLE Seabrook and reflects the fact that the
3 auction was equitable and maximized the value of the assets being sold. The sale
4 price is \$836.6 million, subject to certain adjustments at closing. In addition to
5 the Station (Units 1 and 2), the purchase price includes the projected fuel and
6 non-fuel inventories at closing. The Selling Owners are responsible for making
7 their currently required decommissioning fund top-off payments on or before the
8 date of sale closing. At that time, the Selling Owners will transfer their respective
9 decommissioning trust funds to FPLE Seabrook, and FPLE Seabrook will assume
10 its proportionate share of decommissioning liability for the acquired portion of
11 Seabrook. In addition, the transaction does not require a PPA between FPLE
12 Seabrook and any of the Selling Owners after the closing. Additional details
13 regarding the sale are discussed below.

14 **V. DESCRIPTION OF THE TRANSACTION AND PSA**

15 **Q. What exactly is being sold?**

16 A. On April 13, 2002, the Selling Owners and FPLE Seabrook entered into the PSA
17 for the sale of Seabrook. The PSA provides for the sale of 88.23 percent of
18 Seabrook (MMWEC, Taunton and Hudson chose not to sell their ownership
19 shares in Seabrook). In addition, as noted above, fuel assets associated with
20 Seabrook Unit 1 will also be sold.

1 **Q. Are there any PPA requirements as part of this sale?**

2 A. Canal is not retaining any obligation to purchase power from Seabrook and,
3 accordingly, Canal has entered into a Buyout Agreement with Cambridge and
4 Commonwealth that terminates the Seabrook PPA, described infra.

5 **Q. Where are the terms of the sale of Seabrook contained?**

6 A. The PSA is the principal document setting forth the terms under which the Selling
7 Owners will sell their share of Seabrook to FPLE Seabrook. The sale prices for
8 elements of Seabrook are as follows:

9 • Unit 1 Facilities	\$746,710,000
10 • Unit 2 Facilities	\$25,600,000
11 • Nuclear Fuel	\$61,900,000
12 • Real Property	<u>\$2,400,000</u>
13 TOTAL	\$836,610,000

14 (Petition, Exhibit 3, § 2.5). Additional information regarding the PSA may be found
15 in the Dabbar Testimony.

16 **Q. Does the PSA address the potential for excess contributions to the**
17 **decommissioning fund after decommissioning of Seabrook has been completed?**

18 A. Yes. The PSA contains a provision (Section 5.10(h)(ii)) that states that, if such
19 excess is determined to represent Massachusetts customer contributions, this excess
20 would be returned to Massachusetts customers to the extent required by any
21 applicable Law, as defined under the PSA.

1 **Q. Are other regulatory approvals required prior to closing this sale?**

2 A. The sale is contingent upon the approval of a number of regulatory agencies both
3 at the federal and state level, including, but not limited to, the Federal Energy
4 Regulatory Commission (“FERC”), the Nuclear Regulatory Commission, the
5 NHPUC, the DPUC and the Department. The parties will also submit all
6 necessary applications to federal and state regulatory bodies. Once the sale is
7 approved by the Department, and subject to the receipt of all other required
8 regulatory approvals, the parties wish to close this transaction on or before late
9 November 2002. In order to meet this schedule, Canal requests that the
10 Department review its Petition contemporaneously with those filed with the
11 Department on this date by New England Power Company and The Connecticut
12 Light and Power Company and approve the sale transaction and the Buyout
13 Agreement by August 30, 2002.

14 **Q. Does the sale provide benefits to customers?**

15 A. Yes. The sale will offer benefits to customers by furthering the Act’s goal of
16 moving generation to the competitive sector. In addition, Canal’s share of the
17 substantial proceeds from the sale will mitigate transition costs. Thus, through
18 Canal’s efforts to maximize the mitigation of transition costs by participating in
19 an open and competitive auction to sell Seabrook, the sale will have a direct and
20 significant beneficial effect on Cambridge’s and Commonwealth’s customers.
21 Finally, customers will benefit from the sale because it will eliminate risks of
22 future costs and liabilities related to the operation and decommissioning of

1 Seabrook (other than the limited contributions to decommissioning funds
2 discussed above) to which customers conceivably would otherwise be exposed.

3 **VI. THE BUYOUT AGREEMENT**

4 **Q. Please describe the current Seabrook PPA.**

5 A. The Seabrook PPA consists of an agreement dated September 1, 1986, as
6 amended by eight agreements dated June 1, 1988, February 28, 1990,
7 December 5, 1991, December 19, 1991, March 6, 1992, November 1, 2000,
8 April 1, 2001 and December 18, 2001, providing for the sale of capacity and
9 related energy by Canal from Seabrook Unit 1 to Cambridge and Commonwealth
10 under a life-of-the-unit agreement (currently anticipated to terminate in 2026)
11 Pursuant to the Seabrook PPA, Commonwealth is entitled to 80.06 percent of the
12 capacity and related energy (approximately 32.5 MW) produced by that portion of
13 Seabrook owned by Canal (3.52317 percent, or approximately 40.5 MW) and
14 Cambridge is entitled to 19.94 percent (approximately 8 MW).

15 **Q. Please describe the terms of the Buyout Agreement.**

16 A. The Buyout Agreement is the Ninth Amendment to the Seabrook PPA (Petition,
17 Exhibit 4). Pursuant to the Buyout Agreement, Cambridge and Commonwealth
18 will buy out of any and all of their obligations pursuant to the Seabrook PPA for
19 the purchase of capacity and energy from Seabrook. The amount to be paid (the
20 “Buyout Amount”) is estimated to be \$14.4 million and includes the following
21 three categories of credits and payments:

- 1 • Canal shall credit 80.06 percent and 19.94 percent of its proceeds for
2 Seabrook to Commonwealth and Cambridge, respectively,² net of certain
3 adjustments, including, but not limited to: (i) out-of-pocket costs
4 associated with the sale of Seabrook Unit 1 and Seabrook Unit 2,
5 (ii) transfer and sales taxes; and (iii) a 10 percent adjustment associated
6 with the investment in Seabrook Unit 2;
7
- 8 • Cambridge and Commonwealth shall make a closing payment to Canal in
9 an amount equal to their respective contract shares of the following
10 Seabrook-related costs: (i) the balance of Canal's net unit investment in
11 Seabrook; (ii) decommissioning costs; and (iii) billing, payment and
12 accounting liabilities associated with the Seabrook PPA; and
13
- 14 • To the extent that Canal may incur liability to government entities or to
15 private parties arising out of its ownership or operation of Seabrook prior
16 to the closing date, Cambridge and Commonwealth will remain
17 responsible for their respective contract shares of Canal's 3.52317 percent
18 of such liability (to the extent that Canal is not otherwise entitled to
19 indemnification, compensation or other reimbursement from FPLE
20 Seabrook, an insurer or any other party). Accordingly, to the extent that
21 Canal receives refunds, credits, reimbursements or other compensation
22 from government entities or private parties associated with its ownership
23 or operation of Seabrook before the effective date, Canal will remit such
24 amounts to Cambridge and Commonwealth based on their respective
25 contract percentages (net of the costs of obtaining such recoveries).
26

27 **Q. Why is Canal entering into the Buyout Agreement?**

28
29 A. G.L. c. 164, §§ 1A and 1G require electric companies to seek to mitigate
30 transition costs, including, as one mitigation method, the renegotiation of above-
31 market power purchase contracts. See G.L. c. 164, §§ 1G(d)(1) and (2). In
32 addition, the Department approved the Companies' Restructuring Plan that
33 provides for the buyout or buydown of above-market purchase-power obligations.
34 Cambridge Electric Light Company, Canal Electric Company and

² For purposes of disposition of Seabrook Unit 2's assets and liabilities, the Commonwealth Share is 80 percent and the Cambridge Share is 20 percent, pursuant to FERC Docket ER86-704-001

1 Commonwealth Electric Company, D.P.U./D.T.E. 97-111, at 90 (1998).
 2 Therefore, consistent with the statute and the Companies' Restructuring Plan, the
 3 Companies have entered into several agreements in the past to buydown
 4 Cambridge's and Commonwealth's obligation relating to the Seabrook PPA. See
 5 e.g., Cambridge Electric Company and Commonwealth Electric Company,
 6 D.T.E. 99-89 (2000). In the context of the sale of the Station to FPLE Seabrook,
 7 the Companies will not retain any obligation to purchase power from Seabrook.
 8 Accordingly, Canal's sale of its ownership interest necessitates termination of the
 9 Seabrook PPA.

10 **Q. How does terminating the Seabrook PPA benefit customers?**

11 A. Cambridge's and Commonwealth's customers will save approximately \$6.1
 12 million associated with Seabrook Unit 1 and an additional \$2.3 million associated
 13 with Seabrook Unit 2³ if the Seabrook PPA is terminated pursuant to the Buyout
 14 Agreement, as compared to their costs if Cambridge and Commonwealth
 15 continued to purchase power pursuant to the PPA. The Companies have attached
 16 Exhibit 5 to their Petition, which details the categories and amount of customer
 17 savings associated with the Buyout Agreement. In addition, customers benefit
 18 from avoiding the risk of additional costs associated with the continued obligation

(1988).

³ Approximately \$1 million of the savings relating to Seabrook Unit 2 is directly related to the purchase price paid for Seabrook. The remaining savings associated with divesting this unit result from credits associated with the Buyout Agreement.

1 to purchase the output from Seabrook. For instance, increases in projected capital
2 additions, operating costs, and decommissioning costs could enlarge the projected
3 financial obligation of customers. Moreover, reductions in unit availability or
4 projected market prices for electricity could reduce the value of the projected
5 output of the plant. These non-qualified, future risks to customers are eliminated
6 with the sale of Seabrook.

7 **Q. Does the Buyout Agreement meet the Department's standard of review for**
8 **such contracts?**

9 A. As noted in the Petition, when reviewing power contract buyouts, buydowns and
10 renegotiations, the Department has applied its standard of review of settlement
11 agreements, i.e., a standard of reasonableness. Commonwealth Electric Company
12 (Lowell Cogen Buyout), D.T.E 99-69, at 7 (1999); Boston Edison Company
13 (L'Energia Buyout), D.T.E. 99-16, at 5-6 (1999); Western Massachusetts Electric
14 Company (Springfield Resource Contract Restructuring), D.T.E. 99-56, at 7-8
15 (1999). In assessing the reasonableness of a power-purchase contract
16 renegotiation, buyout or buydown, the Department reviews available information
17 to ensure that the agreement is consistent with the public interest. Western
18 Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000) (MASSPOWER
19 Buyout); Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993); Boston
20 Edison Company, D.P.U. 92-183 (1992) (Department approval of a termination
21 agreement of a purchase-power contract with Down East Peat, L.P.).
22

1 **Q. Why is the Buyout Agreement consistent with the public interest?**

2 A. The Buyout Agreement is consistent with the public interest because it will cost
3 Cambridge's and Commonwealth's customers less than the current Seabrook
4 PPA, thereby mitigating transition costs relating to the Seabrook PPA, consistent
5 with the Act and the Companies' Restructuring Plan. Further, divestiture of
6 generating assets is also consistent with the Act and the Companies'
7 Restructuring Plan and therefore, is in the public interest. Accordingly, the
8 Buyout Agreement is reasonable and consistent with the Department's standard of
9 review for buyout or buydown agreements.

10 **VII. EXEMPT WHOLESALE GENERATOR ("EWG") STATUS**

11 **Q. Please explain the findings that have been requested of the Department**
12 **under Section 32 of PUHCA.**

13 A. The Petitioners have requested the Department make certain findings that are
14 required by § 32 of PUHCA in order for Seabrook Unit 1 to be able to obtain
15 EWG status. FLP will be seeking to have FERC determine that Seabrook Unit 1
16 is an "eligible facility" pursuant to § 32 of PUHCA. Canal is seeking a specific
17 determination by the Department that allowing the generation asset to become an
18 "eligible facility" pursuant to § 32 of the 1935 Act: (1) will benefit consumers;
19 (2) is in the public interest; and (3) does not violate state law. As further
20 described below, the sale is contingent upon obtaining EWG status.

21 EWG status is necessary in order to avoid compliance with the burdensome
22 requirements applicable to public utility company affiliates of holding companies

1 under PUHCA. EWG status is critical to the sale of Seabrook, because it allows
2 ownership and operation of Seabrook without regulation as a public utility
3 company under the 1935 Act. The EWG exemption to PUHCA was specifically
4 created in 1992 to avoid subjecting competitive generation to the restrictions of
5 the 1935 Act and to enhance the creation of a competitive generation market.
6 Few, if any, entities would have been willing to bid for Seabrook if EWG status
7 had not been made a condition of the sale. Without the EWG condition, Seabrook
8 would be virtually unmarketable, and, in any event, the purchase price realized by
9 the Canal and the other Selling Owners would likely have been greatly reduced.
10 EWG status is a closing condition and, as such, is crucial to obtaining the
11 previously described benefits to consumers.

12 **Q. Does this conclude your testimony?**

13 **A. Yes, it does.**